

QUINN EMANUEL URQUHART & SULLIVAN, LLP
Charles K. Verhoeven (Bar No. 170151)
charlesverhoeven@quinnemanuel.com
David A. Perlson (Bar No. 209502)
davidperlson@quinnemanuel.com
Melissa Baily (Bar No. 237649)
melissabaily@quinnemanuel.com
John Neukom (Bar No. 275887)
johnneukom@quinnemanuel.com
Jordan Jaffe (Bar No. 254886)
jordanjaffe@quinnemanuel.com
50 California Street, 22nd Floor
San Francisco, California 94111-4788
Telephone: (415) 875-6600
Facsimile: (415) 875-6700

Attorneys for WAYMO LLC

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

WAYMO LLC,

CASE NO. 3:17-cv-00939

Plaintiff,

VS.

UBER TECHNOLOGIES, INC.;
OTTOMOTTO LLC; OTTO TRUCKING LLC.

**PLAINTIFF WAYMO LLC'S RESPONSE
TO UBER AND OTTOMOTTO'S MOTION
FOR RELIEF FROM AND EMERGENCY
MOTION TO STAY OF NON-
DISPOSITIVE PRETRIAL ORDER OF
MAGISTRATE JUDGE (DKT. 881)**

Defendants

Judge: The Honorable William Alsup

Trial Date: October 10, 2017

REDACTED VERSION OF DOCUMENT(S) SOUGHT TO BE SEALED

1 This Court should deny Defendants Uber and Ottomotto's (collectively "Uber's") Motion
 2 for Relief From and Emergency Motion for Stay of Non-Dispositive Pretrial Order of Magistrate
 3 Judge. (Dkt. 811.) Magistrate Judge Corley did not err in finding that the Ottomotto software
 4 modules that are identified in sections 2.8, 2.10, and 2.15 of the Ottomotto Disclosure Schedules
 5 that are part of the Uber-Ottomotto acquisition agreement are relevant and should be produced.
 6 The requested software modules reveal what Uber purchased when it acquired Ottomotto. This is
 7 relevant to showing whether Uber acquired Waymo trade secrets, and whether Uber knew it was
 8 doing so. They are also within the scope of Waymo's asserted trade secret claims, including
 9 specifically a document illicitly downloaded by Mr. Levandowski that describes on a weekly basis
 10 the work Waymo was doing, problems faced, solutions and other information regarding the same
 11 kind of software modules Judge Corley ordered produced.

12 **I. THE REQUESTED SOFTWARE MODULES ARE RELEVANT TO SHOW**
WHETHER UBER ACQUIRED WAYMO TRADE SECRETS.

13 The [REDACTED] software modules disclosed in the Ottomotto Disclosure Schedules—called [REDACTED]
 14 [REDACTED]
 15 are part of what Uber acquired when it acquired Ottomotto less than three months after Ottomotto
 16 was formed (emphasis added). Thus, they are very relevant to determining *what* Uber acquired,
 17 namely whether it acquired Waymo trade secrets. As Waymo explained in its Motion to Compel,
 18 one of the confidential Waymo documents downloaded by Mr. Levandowski in January before his
 19 resignation is "Chauffeur TL weekly updates – Q4 2015," which is a collection of proprietary
 20 information from technical leads across the entire self-driving program – including Waymo's
 21 software team. (Dkt. 748-3; *see also* Dkt 25-31 ¶ 26.) The document lists software, including
 22 [REDACTED] and [REDACTED]" The document describes, on a weekly basis, Waymo's software
 23 development, goals, challenges, and accomplishments, including, for example, the "[REDACTED]
 24 [REDACTED]" to "[REDACTED]
 25 [REDACTED]" as well as identifying "[REDACTED]
 26 software as including a "[REDACTED]" [REDACTED]
 27 "[REDACTED]" and "[REDACTED]." (Dkt. 748-3, at 1)
 28

1 (emphasis added). Moreover, Ottomotto co-founder Don Burnette, who apparently designed the
 2 Ottomotto software in the very short period of time between its founding and acquisition, was one
 3 of the five “Diligenced Employees” investigated by Stroz and [REDACTED]
 4 [REDACTED]. (Dkt. 515-5 at 22; Ex. 12.) Dozens of entries on Uber’s
 5 privilege logs refer to “information obtained from . . . Don Burnette[.]” (See, e.g., Dkt. 637-4 at
 6 entries 293-300.)

7 Uber does not dispute any of this in its Objections to the Magistrate’s Order. (Dkt. 929-4.)
 8 Instead, Uber argues that Waymo is not entitled to the software modules because they are not
 9 related to LiDAR. (*Id.*, at 2-3.) Uber made this argument below and the Magistrate correctly
 10 rejected it. Waymo’s asserted trade secrets are not limited to LiDAR and Waymo pointed the
 11 Court specifically to the trade secrets which the software modules may relate to, including the
 12 “Chauffeur TL weekly updates – Q4 2015.” In its Objections, Uber argues that the weekly update
 13 spreadsheet does not support expanded discovery and relies on *Loop AI Labs Inc. v. Gatti*, 195 F.
 14 Supp. 3d 1107 (N.D. Cal. 2016), which Uber did not cite below. (Dkt. 748-3, at 3.) *Loop*,
 15 however, is distinguishable and does not mandate denial of Waymo’s motion to compel the
 16 disclosed software modules. In *Loop*, the defendant challenged the sufficiency of the plaintiff’s
 17 trade secret disclosure pursuant to Cal. Civ. Proc. Code § 2019.210. *Id.* The Court addressed the
 18 sufficiency of the disclosure; the scope of discovery was not at issue. *Id.* Here, Uber did not
 19 challenge the sufficiency of Waymo’s trade secrets, and cannot be heard to complain now about
 20 the sufficiency of Waymo’s disclosure as a tactic for denying Waymo relevant discovery.

21 **II. THE SOFTWARE MODULES ARE RELEVANT TO SHOW THAT UBER KNEW**
IT WAS ACQUIRING WAYMO TRADE SECRETS.

22 The requested software modules identified in the Uber-Ottomotto acquisition agreement are
 23 also relevant to Uber’s trade secret defenses and what Uber thought it was buying. Uber began
 24 negotiating to acquire Ottomotto before the company was founded, before it had any employees, and
 25 before it had any products. Then, just a few months after Ottomotto was founded, Uber acquired it for
 26 \$680 million. Waymo is entitled to know what exactly was worth \$680 million; Waymo contends that
 27 it was Waymo’s trade secrets that justified that impressive price tag. Uber witnesses have described
 28

1 the deal as a “talent acquisition,” but Waymo is entitled to discovery into what else was part of that
 2 acquisition. This is not “fishing” as Uber states in the very first sentence of its Objections. (Dkt. 929-
 3 4, at 1.) According to the acquisition documents, Uber did acquire █ software modules in the
 4 acquisition; Waymo is entitled to know what they are as they are potentially reflective of Waymo’s
 5 asserted trade secrets in its 2019.210 disclosures.

6 In its Objections, Uber complains that Waymo has already taken extensive discovery. (Dkt.
 7 929-4, at 3.) But, Uber does not and cannot dispute that it has not provided any discovery on the
 8 software modules that Uber acquired as part of the deal. Uber also continues to cloak its entire “due
 9 diligence” process under claims of privilege, shielding from Waymo’s view the information
 10 “Diligenced Employee” Don Burnette provided to Uber/Otto regarding these software modules and his
 11 prior work at Waymo. Uber further complains that Waymo requested the software modules as part of
 12 the expedited discovery the Court granted to Waymo as provisional relief when granting Waymo’s
 13 Motion for a Preliminary Injunction. According to Uber, that expedited discovery was limited to
 14 Waymo’s “trade secret misappropriation claims only.” (*Id.*) But, whether the software modules
 15 acquired by Uber constitute Waymo trade secrets is directly relevant to whether Uber acquired
 16 Waymo’s trade secrets, as well as relevant to understanding what Uber thought it was buying and the
 17 overall value of the acquisition.

18

19 Uber’s arguments that the Magistrate Judge erred in ordering production of the software
 20 modules identified in sections 2.8, 2.10, and 2.15 of the Ottomotto Disclosure Schedules are
 21 without merit. Waymo respectfully requests that this Court deny Uber’s request for relief from the
 22 Magistrate Judge’s Order.

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25 DATED: July 21, 2017

QUINN EMANUEL URQUHART & SULLIVAN, LLP

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By /s/ Charles K. Verhoeven

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Charles K. Verhoeven
 Attorneys for WAYMO LLC

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